IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO: 12390 of 1996

Between:

G.S.Bhaskara Rao S/o.Suryanarayana Murthy
Vijayawada Thermal Power Station Ibrahimpatnam
R/o.Vijayawada,Krishna Dist.

..... PETITIONER

AND

1 A.P.S.E.B., rep.by its Chairman
Vidyut Soudha Hyderabad.
2 Member Secretary A.P.S.E.B
Vidyut Soudha Hyderabad.
3 Director Personnel A.P.S.E.B
Vidyut Soudha Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction, after calling for the records relating to their orders in Memo.No.CE/Enq/DM.V/1289-R2/94-3 dated 9-4-1996 and Memo.No.DP/DM.V/1289-R2/94-2/ dated 22-11-95 respectively and quash the order of the 2nd respondent in Memo.No.DP/DM.V/1289-R2/94-2 dated 22-11-95 as confirmed by the 1st respondent in Memo.No. CE/Enq/DM.V/1289-R2/94-3 and consequently direct the respondents to provide all the service benefits lost on account of the order or 'dies non' and pass such other order or orders are deemed fit and proper.

Counsel for the Petitioner: MR.V.RAVINDER RAO

Counsel for the Respondent Nos.1 to 3: MR.S.RAVINDRANATH

The Court made the following:

ORDER:

By a decision of the second respondent communicated by the third respondent dated 22-11-1995, the petitioner, an Assistant Divisional Engineer working in the Rayalseema Thermal Power Project (RTPP) at the relevant time of the allegations and currently working in the Vijayawada Thermal Power Station (VTPS), was inflicted with the penalty of censure and treatment of his absence from duty during the period from 04-09-1994 to 24-4-1994 as "dies.non". The period of his absence was characterized as unauthorized absence.

2. The chronology of events, leading to the said order, is as under:

On 16-12-1993, the petitioner was promoted as an Assistant Divisional Engineer and posted to the RTPP, whereat he joined duty on 14-02-1994. He was sent for training for 26 weeks to the VTPS. During the period of training, the petitioner's wife is claimed to have suffered some severe health problems, for which the petitioner availed leave during April and May, 1994 (during the period of training). He eventually completed his training by 14-08-1994 and reported back to active service in the RTPP on 19-08-1994. During the period of his training, he appears to have been afflicted with acute Bronchitis and Asthma, which continued even after reporting to active duty at the RTPP. He underwent treatment at the RTPP plant Hospital and getting no relief, he applied for four days medical leave on 04-09-1994. He consulted a specialist at the Government Hospital, Kakinada. While undergoing the course of treatment at the Kakinada Hospital, he sent a telegram dated 11-09-1994 to the RTPP seeking extension of leave, an application duly supported by relevant medical certificates. On 08-10-1994, he sent another telegram seeking further extension of his leave up to 20-10-1994. Again on 26-10-1994, he submitted a consolidated leave application seeking leave up to 23-12-1994, in which leave application he again enclosed the relevant medical certificates. On 28-12-1994, he reported to duty. By the orders of the Chief Engineer, RTPP dated 31-12-1994, the petitioner services were surrendered to the Headquarters (Director Personnel) for appropriate posting orders. On 20-04-1995, the third respondent issued orders posting the petitioner at VTPS, whereat he joined active service

on 25-04-1995.

3. Earlier, on 16-11-1994, the Chief Engineer, RTPP issued a memo to the petitioner calling him to explain his unauthorized absence. The petitioner submitted his explanation on 30-11-1994 to the Chief Engineer. After the petitioner was giving posting orders, on 28-08-1995, a show cause notice was issued intimating him as to initiation of disciplinary enquiry for his unauthorized absence. The petitioner submitted his explanation on 16-09-1995 denying the allegation of unauthorized absence and stating that his absence during the period from 04-09-1994 to 28-12-1994 was occasioned due to his ill-health, and that his not joining active service after 28-12-1994 was on account of his services having been surrendered to headquarters and no posting orders having been given to him till 20-04-1995, whereafter, he joined service on 24-05-1995.

4. The second respondent by the impugned order dated 22-11-1995, imposed the penalty of censure, characterizing his absence from duty as unauthorized absence ordered that the period during 04-09-1994 to 24-04-1995 be treated as "dies.non".

5. The order of the second respondent communicated by the third respondent dated 22-11-1995 is a classic illustration of non-application of mind and arbitrary exercise of disciplinary power. The order speaks for itself and one can do no better than to extract the order in extenso:

> "In the reference 1st cited a show cause notice was issued to Sri G.S.Bhaskara Rao, Asst.Divisional Engineer/Elecl.proposing the punishment of stoppage of one increment without cumulative effect, besides treating his unauthorized absence from duty from 4-9-94 FN to 24-4-95 AN as 'Dies-Non' and directed to submit his explanation.
>
> 2. In the reference 2nd cited Sri G.S.Bhaskara Rao, Asst.Divisional Engineer/Electrical has submitted his explanation stating that:-
>
> a) He was suffering from Chronic Bronchitis and consequently got breathing trouble at RTPP during last week of 8/94. He got treatment in RTPP Hospital, but he could not get relief. Hence, he applied and got sanction of casual leave from 4-9-94 to 7-9-94.
>
> b) He approached Specialist Doctor in Government General Hospital, Kakinada. On Doctor's advice, he extended the leave from time to time.

c) After recovery of his health, he approached Chief Engineer, RTPP on 28-12-1994 and requested for reposting orders. But he was surrendered to Board, so he approached the Board authorities and submitted representation with a request to issue reposting orders to East Godavari or West Godavari or VTPS as both himself and his wife are sick.

d) He was on medical leave from 4-9-94 to 27-12-94 and earned leave from 28-12-94 to 24-4-95 waiting for reposting orders and requested to drop the proposed punishment and sanction his leave.

3) The Member Secretary, APSE Board has examined the explanation of the Asst.Divisional Engineer and taking lenient view has decided to award the punishment of Censure, but treating his unauthorized absence from duty from 4-9-94 FN to 24-4-95 AN as 'Dies-Non'.

4) Accordingly Sri G.S.Bhaskara Rao, Asst.Divisional Engineer/Electrical is censured and his unauthorized absence from duty from 4-9-94 FN to 24-4-95 AN shall be treated as 'Dies-Non'.

5) He is also informed that only one appeal against this order lies to the Chairman, within 3 months vide Regulation 18 of APSEB Discipline and Appeal Regulations from the date of receipt of this Memo, if he prefers any appeal."

6. In para 3 of the order, the third respondent records have examined the explanation of the petitioner and taking a lenient view, decided to award the punishment of censure. There is nothing recorded as to why the explanation of the petitioner was found unsatisfactory, whether his leave applications and/or medical certificates were not received, the ailment on the basis of which he claimed leave for the period was insufficient to incapacitate him from joining duty, whether the medical certificates furnished by the petitioner in support of his leave applications were fraudulent nor any other reason why his explanation did not commend itself for consideration by the respondents. Why a lenient view had to be taken and in what context is also not stated. The impugned order of the second respondent is inconsistent with the Republic of reasons into which we have constituted ourselves as a Nation. The second respondent's order is more appropriately an imperial fiat addressed to a slave rather than by a public servant to another citizen of the nation. This order invites invalidation.

7. Aggrieved by the order, the petitioner preferred an appeal to the first respondent-Chairman. By an order dated 09-04-1996, the first respondent

appellate authority records as under:

> "The Chairman, APSEB, has carefully examined the appeal of Sri G.S.Bhaskara Rao, Asst. Divisional Engineer/Electrical and observed that the Member Secretary, APSE Board after taking a lenient view has reduced the punishment from stoppage of one increment without cumulative effect to Censure besides treating his unauthorized absence from 4-9-94 FN to 24-4-95 AN as 'Dies-Non'. Therefore, the Chairman does not see any reason to interfere with the orders issued by Member Secretary in his Memo 1st cited and decided to reject the appeal."

8. It is apparent that the first respondent perused the order of the second respondent, but it is inconceivable that he saw no reason to interfere with the order appealed against. The first respondent appears to share the perceptions of the second respondent with regard to obligations of a disciplinary and appellate authority in a quasi-judicial proceedings, or, in law. The impugned orders of the first and second respondent are irrational and constitute a blatant abdication and abuse of quasi-judicial powers. This Court hopes and trusts that the APSEB will consider the need to administer appropriate basic training to disciplinary and appellate authorities exercising disciplinary power to ensure that such extravagant, irrational and whimsical orders in disciplinary proceedings do not recur.

9. The Writ Petition is for the reasons aforesaid, allowed. The orders in memo No.DP/DMV/1289/R2/94-2 dated 22-11-1995, and Memo No.CE/Eng./DM.V/1289-R2/94-3 dated 09-04-1996 are quashed. The petitioner shall be entitled to all the service benefits consequent on the quashing of the above orders treating the orders as still-born and *non-est.* This shall not however preclude the respondents from the proceedings according to Law. No costs however.

GODA RAGHURAM, J

03rd August, 2004.

SKM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the Third day of August, Two thousand and Four.

To

1 The Chairman, A.P.S.E.B.,
Vidyut Soudha, Hyderabad.
2 The Member Secretary, A.P.S.E.B
Vidyut Soudha Hyderabad.
3 The Director Personnel, A.P.S.E.B
Vidyut Soudha, Hyderabad.

4 Two C.D. copies.